



## **Missouri Department of Natural Resources**

### **Missouri Clean Water Commission Conference Call Minutes April 5, 2002**

#### **Participating:**

Thomas Herrmann, Chairman, Clean Water Commission  
Davis Minton, Vice-Chairman, Clean Water Commission  
Janice Greene, Commissioner, Clean Water Commission  
Arthur Hegi, Commissioner, Clean Water Commission  
Kristin Perry, Commissioner, Clean Water Commission  
Deborah Neff, Assistant Attorney General  
Steve Townley, Chief, Water Pollution Control Program Financial Services Section  
Carrie Schulte, Financial Services Section, Water Pollution Control Program  
Diane Waidelich, Commission Secretary  
Jim Hull, Staff Director  
Michael Warrick, Water Protection and Soil Conservation Division  
Aimee Davenport, Water Protection and Soil Conservation Division  
Karen Massey, Environmental Improvement and Energy Resources Authority  
Tom Welch, Environmental Improvement and Energy Resources Authority  
Jamie Estes, Region VII EPA  
Dan Reebeck, Region VII EPA.

Commissioner Kelly was not available to participate.

#### **Adjustment to the FY 2003 Clean Water Intended Use Plan/Transfer of Funds**

Mr. Townley reported on the potential transfer of funds from the Clean Water Revolving Fund subaccount to the Drinking Water Revolving Fund subaccount. Staff proposed to transfer up to \$10 million to resolve cash flow issues in the Drinking Water State Revolving Fund (SRF) component as a result of a freeze that EPA recently enacted relating to access to capitalization grants. The background information provided to the commission provides the statutory authority to provide these types of transfers. Mr. Townley noted a transfer of approximately \$10,475,000 was done last year to begin the drinking water program and address some overwhelming needs at that time. Assuming all of EPA's criteria can be met, staff will then be in a position to request of EPA the authority to move these additional funds from one account to another.

Mr. Townley explained the need to cover existing obligations to drinking water loan recipients of which we are short \$106,000 and then needing to cover the proposed financing of four more projects under the drinking water program in the spring closing. The par amount of bonds for those projects would be approximately \$10,750,000. With their 50% subsidy, a minimum of \$5,375,000 would be needed to cover the contractual

obligations that would be entered into when the loans are originated with the individual participants around the first part of May. Adding the \$5,375,000 and \$106,000 the minimum need is approximately \$5,400,000.

Mr. Townley stated the current transfer authority that allows these transfers ends on September 30, 2002. Staff expects Congress to provide additional extension language but there is discussion about providing a permanent extension. Immediate cash flow needs are not such that this transfer has to be made at this time. The ability exists to continue to work with EPA to try to resolve the differences which staff expects to happen in the next several weeks. If this does not occur, staff has until September to make this transfer. If resolution of the issue is not reached, staff has to transfer the funds by September 30, 2002.

Mr. Townley reported in order to effect a transfer, both the Drinking Water and Clean Water Intended Use Plans must contain a discussion and analysis of the impact on the short- and long-term goals of the program. Staff believes the issues will be resolved with EPA and this transfer will not actually take place. In the event the transfer becomes necessary, staff needs to be in a position to do so.

Mr. Townley stated a transfer would necessitate moving four projects from the fundable Clean Water list to the top of the contingency list. Five projects would be moved in total with one project receiving a reduction in funding. Staff would continue to work with the communities so that when funds are restored through the EPA capitalization grant, or through recovery of bypassed funds in September, they could be brought back on to the fundable list. Mr. Townley noted this appears to be a relatively short-term situation and will not negatively impact any of the projects anticipating financing this fall or next spring.

Mr. Townley explained there is specific language in EPA's guidance that sets out how the transfer authority ceiling is derived. Staff has analyzed each of the drinking water capitalization grants that have been received to date. The ceiling is based on one-third of those actual receipts. There is a transfer authority ceiling of approximately \$17.1 million. About \$10,475,00 has already been transferred. Mr. Townley reported the maximum that could be transferred today is \$6.65 million. If the 2001 capitalization grant is received this summer, there is a potential to reach the \$10 million ceiling.

Mr. Townley explained the chart he provided the commission on the Drinking Water SRF fund analysis. The day-to-day activities are identified along with the repayment account, fund 602, which is the account that holds all of the repayments. There is approximately \$11.6 million worth of obligations that have originated to date through the financings. These obligations are represented by the amount of money that needs to be deposited into the reserve accounts. Presently, there is \$11,494,000 in the repayment fund. If the freeze on the access to federal funds continues for an inordinate amount of time, all of the monies in the repayment account would be insufficient to cover obligations in the amount of \$105,791. This negative position needs to be covered in order to go forward with the commitments to communities to fund up their reserve accounts. This provides the

interest benefit that the communities receive by participating in the program. The inability to fund up the reserves impacts the communities' ability to repay their loans because they will not be able to get the subsidy that they originally intended. A requirement to fund up \$5,375,000 represents the 50% subsidy amount for the \$10 million transaction that staff hopes to originate this spring. This leaves a negative amount of \$5,480,000. From the chart, in June 2002, there is a \$553,000 deposit in fund 602. These are repayments of principal and interest of financings originated to date. If a transfer were needed at this time to cover previous obligations plus the spring closing, a minimum of \$5.48 million would be needed. If a transfer were not needed until the later part of the summer, a minimum of \$4.9 million would be needed to honor contractual obligations. Mr. Townley stated a transfer of \$10 million September 1 was included to give the commission an idea of what it might look like going forward to the fall closing assuming staff was not able to satisfy EPA's concerns. A \$15 million transaction is predicted for the fall closing necessitating a \$7.5 million reserve fund deposit leading to a negative \$2.4 million.

Mr. Townley pointed out if less than the full \$10 million is transferred, a continuing freeze from EPA would require the fall schedule to be scaled back about \$5 million in order to keep a balanced financial position.

Two additional charts were provided: the Clean Water SRF fund analysis and a Clean Water SRF fund analysis option 2. In the clean water repayment account, there is \$177 million on deposit. There is a commitment obligation of \$86.7 million for a \$90 million balance. Staff anticipates needing \$13 million for the spring closing to cover the reserve fund commitments for a balance of \$77 million of uncommitted funds. The MSD note transaction matures in June with deposit on June 30 of about \$52.7 million of the principal and interest repayments. As of July 1, there will be about \$133 million of uncommitted funds. Assuming there is a transfer out of \$10 million, the balance would be \$123 million. Staff is expecting about \$165 million for the fall closing and would need \$45.5 million of reserve fund capacity to satisfy that. The Little Blue Valley Sewer District \$6 million interim direct loan matures in January 2003. The Little Blue Valley Sewer District permanent financing of \$86 million occurs January 15, 2003 making necessary a \$60 million reserve fund commitment. Mr. Townley reported going into the spring closing of about \$40 million next year \$28 million would be needed. This would bring about a negative fund balance.

Under option 2, instead of transferring the full \$10 million, staff presented the option of transferring \$5.48 million, the immediate amount necessary to cover the drinking water obligations existing at this time plus those anticipated closing on this spring. Under this option, there would be a positive balance going into next year.

Referencing the 2000 capitalization grant as well as the 2001 capitalization grant, \$70 million followed by \$66 million are the amounts. At any point in time the freeze with EPA is resolved, staff would have the immediate ability to access the 2000 capitalization grant which would insert \$70 million into either of the two analyses. Mr. Townley

concluded whenever the 2001 capitalization is received, staff would have an additional \$66 million that would be added.

Mr. Townley pointed out this is a cash flow analysis necessitated by EPA's freeze on our grant funds. Ordinarily staff would be reporting on an anticipatory basis assuming that EPA funds would be available going forward. In their absence we must evaluate our program and our obligations based on available cash.

In the FY 2003 Clean Water IUP, all the monies were committed to projects but there was a substantial contingency list of approximately \$375 million. There is a huge expectation in the near term that staff will be accelerating loan activities and utilization of the funds.

Mr. Townley recommended, based on staff's review of the present situation and the obligations staff has to satisfy, transfer be authorized from the clean water repayment subaccount to the drinking water repayment subaccount.

Chairman Herrmann noted the recommendation is to transfer \$10 million but there is an immediate need for \$5,487,091. He asked if staff anticipates the need for \$10 million.

Mr. Townley responded the maximum that could be transferred at this time is \$6.6 million. Cash flow needs are \$5.5 million minimum. In order not to have to do another IUP amendment and go through an additional conference call Mr. Townley asked for the \$10 million transfer to address all of the options.

Commissioner Minton stated the transfer of the \$5.4 or \$10 million is an insignificant issue. The issue facing the commission is resolution of the situation between the Department of Natural Resources and the Environmental Protection Agency. Commissioner Minton asked if the agency knows what is required by EPA in order to make sure that not only does the commission have to transfer the \$10 million but have little opportunity to receive that money back from the Safe Drinking Water Commission. He noted somewhere along the line warnings were being given by the EPA and we failed to heed them. Commissioner Davis noted he would be more comfortable extending the \$5.4 million and then having a phone conference rather than turning over \$10 million and not keeping track of it. He stated he wants staff to know that there is a timeline not only with EPA but also with the commission. Commissioner Davis asked what has to be done to satisfy EPA.

Jamie Estes, Environmental Protection Agency, replied most of the concerns are coming from an Office of Inspector General audit that came out about a year ago. EPA has been dealing with the issues during that time. The reason for the hold on the monies was cited to the Department of Natural Resources as not making substantial progress toward the Corrective Action Plan that was developed between EPA and the Department of Natural Resources. These issues are being worked through.

Commissioner Davis noted the staffs apparently have not worked together well enough because funds are being withheld. He asked if this issue cannot be resolved between now and September.

Mr. Townley replied staff is doing everything they can to meet EPA's expectations. He continued the freeze on the funds came as a complete surprise to staff. Staff has been trying to determine the nature of EPA's needs. Staff has been providing monthly reports to EPA since last fall regarding the OIG audit. The Corrective Action Plan is a result of the audit. Staff's assessment is that a lot of time has been spent trying to address the particular issues identified in the audit instead of relating their accomplishments in the Corrective Action report. There has been significant progress in the accounting system over the last month. Mr. Townley noted staff hopes the Corrective Action Report to be submitted shortly will be received warmly by EPA because it will evidence significant activities on staff's part. Staff hopes the freeze will be lifted in the next 30 days as EPA has made overtures to this effect.

Ms. Estes stated she agrees with this and EPA very much wants to get this resolved. If the commission feels they need more specific information she recommended they contact Alan Wehmeyer for more specific information. She related that Mr. Wehmeyer has been reviewing responses to the Corrective Action Plan and is uncomfortable with the progress.

Commissioner Minton noted this gentleman's concerns need to be satisfied and resolution of the issue has to occur whether or not we feel an adequate job has been done. He continued if it takes a directive from the commission to the staff that's what will have to be done. Commissioner Minton noted the staff was caught off guard and the commission was blindsided. He asked to know the problem areas and what it will take to correct those. It should be very specific and detailed so there is no confusion or opportunity for staff not to be able to accommodate the needs of EPA. He noted he did not want to be unable to recover the money. Commissioner Minton stated he feels very uncomfortable pulling \$10 million out of the Clean Water SRF to give to the Drinking Water SRF.

Chairman Herrmann noted he talked to Scott Totten recently and he was confident and hopeful that the Corrective Action Plan report that is to be completed within the next few days will satisfy the EPA requirements. He suggested the commission should wait to see how EPA receives this report. If there are still problems, the commission should get a full accounting.

Commissioner Perry asked if Chairman Herrmann wanted this report prior to the commission taking action.

Chairman Herrmann responded he is not suggesting that because this is an emergency situation to satisfy current needs. He thought the commission should wait on a response from EPA as to the status.

Commissioner Perry asked why the drinking water fund overobligated.

Mr. Townley responded this is not necessarily an overobligation. The clean water program worked in a similar fashion when it began. Federal funds are not drawn into the state until construction costs are incurred. Mr. Townley estimated about \$100 million has originated in drinking water loans and approximately \$90 million drawn through to put into those reserve accounts. There is still an obligation to those communities because they still have ongoing construction of another \$11,600,000. Under the Direct Loan Program, the entire amount of the loan is drawn down immediately when the transaction is done. In the Leveraged Loan Program, it is done as construction goes forward so there is a delay factor and it's this delay factor that has caught staff in the freeze situation.

Commissioner Perry asked if these are new funds that did not come about in time to meet those obligations.

Mr. Townley responded that is correct.

Commissioner Perry asked about \$4.9 million being necessary if it were to be at the end of the summer where \$5.48 is necessary now.

Mr. Townley explained on June 30 there is a deposit of \$553,000 that represents principal and interest being repaid to the department from the loans that are outstanding to date. This reduces the amount to \$4.9 million.

Commissioner Perry noted it was stated that \$15 million worth of closing would probably have to go back to \$10 million under the drinking water program. She asked if the commission is backing out of their commitment to fund these five projects in order to bail out the drinking water program.

Mr. Townley responded today's presentation says yes to this question. He continued it is staff's hope that they don't have to do this which is the expectation, and that even though staff will be printing and distributing an IUP that possibly moves those communities from the fundable to the contingency list, staff will continue to work with them and move their programs forward so they won't lose any time through the summer. Staff has analyzed where we are on these communities and none of them are in a position that they are going to want to close on a loan this fall. They are really not going to find themselves in a situation that their programs will slow down or not be able to receive financing when they are ready.

Commissioner Perry asked if the amounts in reserve under option 2 not being as high is due to the communities not needing the loans at that time.

Mr. Townley replied option 2 only goes through the spring closing in May 2002. This analysis indicates that a \$5.48 million transfer be authorized at this point. That would only be sufficient to satisfy drinking water financial obligations.

Commissioner Perry noted that would get them through the spring closing and then if this were only an immediate problem that's all the commission really needs to do. She noted the clean water obligations through 2003 could also be met whereas there could be a \$3.9 million shortfall if \$10 million was transferred with the idea that this may need to go through fall.

Mr. Townley noted that is correct.

Commissioner Perry asked why the commission would want to do that.

Mr. Townley replied it is a courtesy to authorize the full \$10 million at this time so that an IUP could be published that takes care of the full range of potential through the rest of the year.

Commissioner Perry asked if this wasn't robbing from something that is solvent to make something else projected to be solvent. She asked if there is some priority where safe drinking water has priority over the clean water fund.

Mr. Townley responded staff would not represent that drinking water is a higher priority than the clean water projects. It is expected that this is just a cash flow situation that will resolve itself within a month or so.

Commissioner Perry asked if that were so, only the \$5.48 million would be needed.

Mr. Townley replied that is correct.

Commissioner Perry noted this would retain solvency on the clean water balance through April 15, 2002.

Commissioner Davis noted this would be maintaining solvency on paper anyway.

Commissioner Perry stated the commission would be \$3.9 million in the negative if the \$10 million is transferred and it seems this also forces staff to get this issue resolved quicker. Commissioner Perry noted she does not understand the need for the cushion at the commission's expense. She continued there is some talk about \$19 million being taken out of this fund for the general revenue fund by the Legislature. She asked what effect that would have on this issue.

Mr. Townley responded discussions are ongoing with the Legislature and with EPA Region VII and EPA headquarters. There are various positions being offered at this time.

Tom Welch, Director of the Environmental Improvement and Energy Resources Authority, replied staff keeps up with this on a daily basis and does not believe this transfer will happen.

Commissioner Perry asked if the two capitalization grants from 2000 and 2001 of \$136 million have not yet been received.

Mr. Townley replied the 2000 capitalization grant of \$70 million for clean water was awarded on March 13 but those funds are frozen during this situation. The 2001 capitalization grant has been applied for but not yet received. Staff anticipates receiving these funds later this summer.

Responding to Commissioner Perry's question, Mr. Townley stated the \$177 million is currently residing in a state treasury account which is not frozen.

Commissioner Davis asked if the only ramification from awarding the \$5.4 million would be the fact that an IUP for the other \$4.6 million will be completed.

Mr. Townley responded the IUP would go out showing a \$5.4 million transfer in lieu of \$10 million. That would only impact one project at the bottom of the current fundable list instead of five projects. It might impact somewhat the second to last project on the fundable list but not nearly to the degree that a \$10 million transfer would. If staff were not able to satisfy EPA that they are doing their best to comply with their requirements, if drinking water loans were originated this fall, staff would need to hold another conference call or public meeting and discuss amending the IUP probably prior to September 1.

Commissioner Perry noted this would allow staff time to develop a solution.

Mr. Townley responded this is a high priority for staff.

Commissioner Perry asked if there is not now \$6.6 million in place to transfer.

Mr. Townley replied that is the maximum staff could actually transfer at this time. The IUP would state that staff would make provisions to transfer \$10 million but at this time would only be in a position to tell EPA that we were transferring up to but not above the \$6.6 million. From the other chart, the \$5.4 million is needed at this time.

Commissioner Perry asked if that would not be another reason to keep this under \$6.6 million at this time. If the transfer were approved now, the amount would be over the ceiling.

Mr. Townley responded the commission would be authorizing an amount up to that which is over the ceiling. That total amount could not be effected until such time as the 2001 award might be received. This poses the question, if you get the 2001 award, why would you need the additional transfer. The response is this situation of freezing and thawing the capitalization grants and access to cash may well be on an intermittent basis.

Commissioner Perry asked if the commission needs to plan for this.



Mr. Townley replied he is not planning for this at all.

Commissioner Davis noted the money won't be needed if the issues between DNR and EPA are resolved but if they are not resolved, then obviously the full \$10 million will be needed at some time. He continued if these issues are not resolved, the commission will have to do a lot of rethinking of how to fund the Clean Water IUP and contingency list if the Clean Water Commission is going to have to fund on a more permanent basis the drinking water fund. The entire approach to what the Clean Water Commission funds will have to be changed. Commissioner Davis noted he is inclined to award the \$5.4 million because he finds it hard to justify awarding \$10 million that's going to put the Clean Water Commission in the negative simply to bail out the Safe Drinking Water Commission needs when the issue needs to be resolved with EPA. If the issue is not resolved, the IUP will have to be radically modified for the future. Commissioner Davis noted if this is not resolved between now and September, he does not want to discuss this during a conference call, but rather during a commission meeting with a lot of time to study it as opposed to a few minutes before a conference call. There are a lot of meetings between now and September and if it does not get resolved prior to that, there are bigger problems than just the \$10 million.

Mr. Townley replied this is exactly correct.

Commissioner Perry pointed out on the drinking water chart there is \$39 million in capitalization grants and that one would be frozen and there would be a potential to receive the other. She asked if they were to receive the \$39 million, would they pay back both the \$10 million that they've already been given and the \$5 million plus so these funds would be available for clean water projects on the contingency list.

Mr. Townley responded whatever amounts that might be transferred today would be repaid back to the clean water account assuming that this happened this summer and before the September 30 sunset of the transfer authority as it is now. To transfer money to them at this time actually over funds their program. It's only needed for cash flow purposes at this time so any additional monies that they would be receiving would be over and above what is now currently identified in their IUP and would be uncommitted and available to transfer back. That would probably have to come forward in next year's IUP though it could be taken up through a modification to the IUP's between now and then. The original transfer of \$10.475 million will probably take a few years for them to transfer back to the clean water account. Mr. Townley stated staff is negotiating with them on that.

Chairman Herrmann noted staff needs authorization today to transfer some amount of money, and if the \$5.48 million satisfies the immediate needs, that should be the amount the commission considers.

Mr. Townley replied that is presently the minimum need.

Commissioner Minton moved to **transfer the minimum amount required, \$5.48 million, to the drinking water fund**; seconded by Commissioner Greene and passed with Commissioner Hegi abstaining.

Mr. Townley thanked the commissioners for their time. He added that Jim Hull joined the conference call after introductions were made. Mr. Townley stated an update on this issue will be given at the May meeting. He will provide copies of the Corrective Action Plan and the monthly responses.

Commissioner Perry asked for updates at each meeting until this matter is resolved.

Chairman Herrmann asked that the commission secretary provide a copy of Jim Hull's resume to commission members prior to the May meeting.

Mr. Hull noted this sounds like an important issue to everyone and he would like to know more about what lead up to this issue and what needs to be done to correct it. He noted he looks forward to meeting everyone at the May commission meeting.

### **Closed Session**

Commissioner Perry moved to **go into closed session** at approximately 11:15 a.m. to discuss legal, confidential, or privileged matters under section 610.021(1), RSMo; personnel actions under Section 610.021(3), RSMo; personnel records or applications under Section 610.021(13), RSMo or records under Section 610.021(14), RSMo which are otherwise protected from disclosure by law; seconded by Commissioner Hegi and unanimously passed.

After closed session, Commissioner Perry **moved to come out of closed session** and Commissioner Greene seconded. Chairman Herrmann then adjourned the conference call by acclamation at approximately noon.